IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.238 OF 1989
ALONG WITH
CROSS-OBJECTIONS NO.11347 OF 1989

The State of Maharashtra
(Original Opponent) ...Appellant.

V/s

1. Shri Kisan Nathya Mhatre; )
2. Shri Shankar Nathya Mhatre;)
3. Shri Datta Nathya Mhatre; )
4. Smt. Tarabai Nathya Mhatre.)
(Original Claimants) ) ...Respondents.

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Mr. K.K. Tated, AGP for the appellant.

Mr. F.A. Mulla i/b S.M. Kamble for respondent Nos. 1 to 4.

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CORAM: R.M.S. KHANDEPARKAR &
V. M. KANADE, JJ.

DATE: 23rd September, 2005

ORAL JUDGMENT: (Per V.M. Kanade, J.)

1. The appellant - State of Maharashtra is challenging the order passed by the Civil Judge, Senior Division, Alibag in Land Acquisition Reference No.96 of 1986 whereby the State was directed to pay the amount of Rs 5,86,468/- to the claimants, respondents herein, with interest @ 9% per annum on the amount of Rs 4,78,749.70 paise from the date of the order till realization of the amount alongwith costs. The appeal was admitted on 23/03/1989 and, thereafter, cross-objections were filed and the

claimants claimed enhanced compensation @ Rs 30.00 per sq. meter.

2. The learned Additional Government Pleader appearing on behalf of the appellant - State of Maharashtra has, at the outset, submitted that, in the present case, the claimants in their reply to the notice which was issued under section 9(3)(4) had claimed an amount of Rs 10.00 per sq. meter and the Special Land Acquisition Officer has granted compensation @ Rs 2.70 paise per sq. meter. Against the said order, reference was filed before the Civil Judge, Senior Division. An amount of Rs 25.00 per sq. meter was initially claimed. The Reference Court, however, granted compensation @ Rs 18.00 per sq. meter. He submitted that, in the present case, the notification under section 4 was issued on 03/02/1970 i.e. prior to the amendment of section 25 which was amended in 1984. He submitted that in view of the judgment of the Supreme Court in the case of The Land Acquisition Officer-cum-DSWO, A.P. Vs. M/s. B.V. Reddy and Sons reported in **2002 AIR SCW 773** which has been subsequently confirmed by the Supreme Court in the case of Ghaziabad Development Authority Vs. Anoop Singh and another reported in **2003 AIR SCW 506**, since the notification was issued before 1984 and the

reference was pending before the amendment came into force, unamended section 25 would be applicable to the facts of the present case and, therefore, the Reference Court could not have granted compensation at the rate higher than the one which was claimed by the claimants in their reply to the notice under section 9(3)(4).

3. The learned Counsel appearing on behalf of the respondents vehemently opposed the submissions made by the learned Additional Government Pleader appearing on behalf of the State. He submitted that no objection was raised to the enhancement of the compensation claimed by the claimants in the reference application. He submitted that in several other appeals which were filed by the Government in respect of the land reference, the awards arising out of the same notification were dismissed by this Court and the award passed by the Reference Court in respect of adjoining identical land had been confirmed. He further submitted that the claimants have now claimed an amount of Rs 30.00 per sq. meter as compensation and in support of the said submission, he has taken us through the judgment of the Reference Court and the evidence adduced by the claimants in support of the said claim.

4. In our view, the submissions made by the learned Counsel appearing on behalf of the appellant - State of Maharashtra will have to be accepted. Section 25 as it stood prior to the amendment in 1984, clearly contemplated that the Reference Court had no jurisdiction to award compensation at the higher rate than the one which was claimed in reply to the notice under section 9(3)(4). Section 25 was amended by the amending Act 68 of 1984. There was some controversy as to whether the judgment in the case of Union of India Vs. Raghubir Singh reported in **(1989) 2 SCC 754** which was in respect of the interest which was payable under section 23(1A) was also applicable to the provisions of section 25 of the said Act. The Supreme Court in the case of Ghaziabad Development Authority (supra), after considering the manner in which the amendment was made, observed that section 30 of the amending Act was applicable only to section 23(1A) and not to section 25. The Supreme Court further observed that by virtue of the amendment to section 25, the amendment would have to be given effect to not retrospectively but prospectively and further laid down the manner in which the reference cases which were pending at the time when the amendment was brought into force should be decided. In the said

judgment, the Supreme Court has clearly laid down that if the notification under section 4 had been issued before the amending Act and award also was passed before that and the reference was pending on the date of the amendment, in such cases, the provisions of unamended section 25 would apply. The contention, therefore, of the learned Counsel appearing on behalf of the respondents cannot be accepted. In view of this, First Appeal No. 238 of 1989 filed by the State will have to be allowed partly and the cross-objections filed by the respondents will have to be dismissed. The order passed by the Reference Court enhancing the compensation to Rs 18.00 per sq. meter will have to be set aside and the compensation will have to be granted @ Rs 10.00 per sq. meter which was the amount claimed by the claimants in reply to the notice under section 9(3)(4) of the said Act.

5. Accordingly, appeal is partly allowed. Cross-objections filed by the respondents are dismissed for the reasons stated hereinabove.

**(R.M.S. KHANDEPARKAR, J.)**

**(V.M. KANADE, J.)**